

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC CRENSHAW,

Defendant-Appellant.

UNPUBLISHED

June 12, 2008

No. 274238

Jackson Circuit Court

LC No. 06-003338-FH

Before: Wilder, P.J., and O’Connell and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of between 50 and 450 grams of cocaine, MCL 333.7403(2)(a)(iii), and of maintaining a drug house, MCL 333.7405(d). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 20 years to 40 years’ imprisonment for the cocaine possession conviction, and 46 months to 15 years’ imprisonment for maintaining a drug house. These sentences are to be served concurrently. Defendant appeals of right, and we affirm.

Shortly after 11:00 p.m., police officers conducted a traffic-stop on a vehicle driven by defendant. The police stopped the vehicle on the basis that the registered owner of the vehicle had a restricted license. While being questioned, defendant admitted that he did not have a valid driver’s license. Thereafter, both defendant and the passenger of the vehicle were arrested and searched. The vehicle was also searched. Police found a bag of marijuana while searching defendant’s passenger and located keys to a motel room in the vehicle on the front seat and on the sun visor. Police contacted the motel, learned that the room was registered to defendant, and obtained a search warrant for the motel room.

The application for search warrant was supported by an affidavit of officer Boulter, an officer with experience and training in investigating drug trafficking crime. In addition to the foregoing facts, Boulter made numerous additional factual allegations in the affidavit, including that the passenger told police that he had gone to the motel with defendant, and had waited in the vehicle while defendant went inside for about ten minutes; that defendant had paid in cash for a seven-day motel stay; that defendant had used the motel multiple times; that defendant was on parole for prior drug crimes; and other allegations giving rise to a reasonable suspicion of drug trafficking. Boulter concluded that defendant might be selling drugs from the motel room.

The magistrate issued the warrant. Police executed it, finding two false-bottom cans containing baggies of cocaine.

Also, inside a safe in the motel room, next to additional cocaine, police seized an electronic scale containing powder residue, over \$1,700 in cash, packaging material, and a dry-cleaning receipt bearing defendant's name. Police also seized receipts indicating that defendant had rented the room. In total, the police seized over 200 grams of cocaine.

The trial court denied defendant's pretrial motion to quash the search warrant and suppress the evidence seized. Defendant then exercised his right to a trial by jury. At trial, over defendant's renewed objection, the trial court admitted into evidence the seized drugs and drug trafficking paraphernalia. Defendant was convicted as charged, and this appeal ensued.

Defendant first argues that the search of the motel room violated his Fourth Amendment right against unreasonable searches and seizures, because there was no probable cause for the issuance of the warrant. Defendant argues that the trial court erred in denying his motion to suppress the seized evidence, and abused its discretion in admitting at trial the evidence of crime seized during the search pursuant to the warrant. We disagree.

Challenges to the admission of evidence are reviewed for an abuse of discretion, although underlying issues of law are reviewed de novo. *People v Jambor*, 273 Mich App 477, 481; 729 NW2d 569 (2007). The trial court's denial of defendant's motion to quash the search warrant and suppress evidence is also reviewed de novo to "the extent . . . [it] is based on an interpretation of the law." *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999). A magistrate's determination that an affidavit generated probable cause to issue a search warrant should be given great deference, *People v Keller*, 479 Mich 467, 474; 739 NW2d 505 (2007), and the trial court's findings of fact are reviewed only for clear error, *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000).

The magistrate, in determining whether to issue a warrant, makes a common-sense determination whether, based on the affidavit, there is a *fair probability* that contraband or other evidence of crime will be found in a particular place. *Keller, supra* at 475, quoting *Illinois v Gates*, 462 US 213, 238-239; 103 S Ct 2317; 76 L Ed 2d 527 (1983). The reviewing court examines whether the information provided in the affidavit "could have caused a *reasonably cautious person* to conclude that there was a *substantial basis* for the determination that probable cause existed." *People v Sloan*, 206 Mich App 484, 486; 522 NW2d 684 (1994), overruled in part on other grounds *People v Hawkins*, 468 Mich 488; 668 NW2d 602 (2003) (emphases added).

Applying this law to the facts presented, we conclude that the trial court did not err when it denied defendant's motion to quash the warrant and suppress the evidence, on the basis that there was probable cause supporting the warrant's issuance. A reasonably cautious person could conclude that there was a substantial basis for determining that probable cause existed that contraband would be found in the motel room based on these facts: drugs were found on the passenger of the vehicle defendant was driving; defendant denied being at the motel, but the passenger stated he waited there for ten minutes while defendant entered the room; there were two motel room keys found in the front seat of the vehicle; the room was registered in defendant's name for a seven day stay for which defendant paid in cash; and defendant had

rented a room at the motel several times in the past even though he was living not far away. In addition, defendant had a cellular telephone on his person, in violation of the terms of his parole, and that cellular phone received 23 calls during the course of the traffic stop (a suspicious numerosity). The police were aware when they sought the search warrant that drug traffickers typically conduct their business from motels and through extensive use of a cellular telephone. “The affiant’s experience is relevant to the establishment of probable cause.” *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001).

The trial court also did not abuse its discretion in admitting the challenged evidence at trial over defendant’s renewed objection, because it “select[ed] a principled outcome from a range of reasonable and principled outcomes.” *People v Kahley*, 277 Mich App 182, 185; 744 NW2d 194 (2007), citing *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Where the evidence was seized during a lawful search, there was no valid objection to its admission at trial.

Defendant next argues that there was insufficient evidence to prove that he possessed the cocaine found in the motel room. We disagree.

This Court must determine whether, considering the evidence in the light most favorable to the prosecution, a reasonable juror could find that the elements of the crimes were established beyond a reasonable doubt, while bearing in mind that the jury is the sole fact finder. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Possession may be actual or constructive. *Wolfe, supra* at 520. Possession is constructive if defendant “had the right to exercise control of the cocaine and knew it was present,” or “had exclusive control or dominion over property” where the cocaine is found, or there was proof that defendant participated in a joint venture. *Id.* at 520-521. Possession need not be exclusive, and it need not include ownership. *Id.* at 520.

A rational jury could reasonably infer that defendant had constructive possession of the cocaine. Whether the possession was exclusive or joint is immaterial. The motel room and safe were registered in defendant’s name, and motel room keys were found in defendant’s vehicle. Defendant had the right to exercise control over the motel room he rented, and therefore over the contraband and paraphernalia contained therein, and there was circumstantial evidence that defendant knew the cocaine was there. Viewing the evidence in the light most favorable to the prosecution, and acknowledging that the prosecutor is not required to disprove the defendant’s theory of innocence, *People v Dewald*, 267 Mich App 365, 371; 705 NW2d 167 (2005), reasonable jurors could have found that defendant constructively possessed the cocaine.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O’Connell
/s/ William C. Whitbeck